

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN W. OWENS,) No. C 08-0291 JSW (PR)
Plaintiff,)
vs.)
SANTA CLARA POLICE)
DEPARTMENT, SERGEANT ALBERT)
WEIR,)
Defendants.)
)
ORDER OF DISMISSAL
(Docket No. 2)

Plaintiff, a detainee at the Santa Clara County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed an application to proceed in forma pauperis, which is GRANTED in a separate order filed simultaneously (docket no. 2). The Court now reviews the complaint under 28 U.S.C. § 1915A(a) and DISMISSES the complaint for the reasons set forth below.

DISCUSSION

Plaintiff's complaint is brief and does not include much detail. However, it is clear from the complaint that Plaintiff is challenging his arrest on a pending criminal complaint in violation of the Fourth Amendment. Plaintiff alleges that Sergeant Weir arrested him because he is African-American. In the section of the Court's Complaint form regarding relief, Plaintiff has requested the courts "give me relief of [sic] prosecution and to hold Serge[a]nt A. Weir accountable for the 4th Amendment violation." Complaint at 4.

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which

1 prisoners seek redress from a governmental entity or officer or employee of a
2 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify
3 any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to
4 state a claim upon which relief may be granted, or seek monetary relief from a
5 defendant who is immune from such relief. *See id.* at 1915A(b)(1),(2). Pro se
6 pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d
7 696, 699 (9th Cir. 1990).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
9 elements: (1) that a violation of a right secured by the Constitution or laws of the
10 United States was violated, and (2) that the alleged deprivation was committed by a
11 person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

12 B. Plaintiff's Complaint

13 In this case, Plaintiff has filed a § 1983 action when the criminal charges about
14 which he complains are pending and have not been reversed or otherwise invalidated.
15 In order to recover damages for allegedly unconstitutional conviction or imprisonment,
16 or for other harm caused by actions whose unlawfulness would render a conviction or
17 sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or
18 sentence has been reversed on direct appeal, expunged by executive order, declared
19 invalid by a state tribunal authorized to make such determination, or called into
20 question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*,
21 512 U.S. 477, 486-487 (1994). An action under 42 U.S.C. § 1983 seeking damages
22 for an alleged illegal search and seizure of evidence upon which criminal charges are
23 based does not accrue under *Heck v. Humphrey*, 512 U.S. 477 (1994), until criminal
24 charges have been dismissed or the conviction has been overturned. *See Harvey v.*
25 *Waldron*, 210 F.3d 1008, 1014-16 (9th Cir. 2000) (claim that gaming devices had been
26 unlawfully searched for and seized under the Fourth Amendment barred by *Heck* until
27 charges for unlawful possession of gaming devices were dismissed).

1 This court should not stay any § 1983 claim for damages implicating the
2 validity of a criminal conviction or sentence until criminal proceedings are completed.
3 *Edwards v. Balisok*, 520 U.S. 641, 649 (1997). *Heck* makes it clear that a § 1983
4 "cause of action for damages attributable to an unconstitutional conviction or sentence
5 does not accrue until the conviction or sentence has been invalidated." *Heck*, 512 U.S.
6 at 489-90 (footnote omitted). Any such claim is not cognizable and therefore should
7 be dismissed. See *Edwards*, 520 U.S. at 649; *McQuillion v. Schwarzenegger*, 369 F.3d
8 1091, 1098 (9th Cir. 2004) (claims for damages were not cognizable at the time of the
9 district court's ruling which occurred prior to the Ninth Circuit's grant of habeas
10 relief); *Butterfield v. Bail*, 120 F.3d 1023, 1025 (9th Cir. 1997) (claim barred by *Heck*
11 may be dismissed under Rule 12(b)(6)); *Trimble v. City of Santa Rosa*, 49 F.3d 583,
12 585 (9th Cir. 1995) (claim barred by *Heck* may be dismissed sua sponte without
13 prejudice under 28 U.S.C. §1915).

14 Moreover, to the extent that Plaintiff seeks injunctive relief, Plaintiff's claims
15 here are barred under the *Younger* abstention doctrine. Under principles of comity and
16 federalism, a federal court should not interfere with ongoing state criminal proceedings
17 by granting injunctive or declaratory relief absent extraordinary circumstances. See
18 *Younger v. Harris*, 401 U.S. 37, 43-54 (1971); *Samuels v. Mackell*, 401 U.S. 66, 68-74
19 (1971). *Younger* abstention is required when: (1) state proceedings, judicial in nature,
20 are pending; (2) the state proceedings involve important state interests; and (3) the
21 state proceedings afford adequate opportunity to raise the constitutional issue. See
22 *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).
23 All three elements must be present. *Agriesti v. MGM Grand Hotels, Inc.*, 53 F.3d 1000,
24 1001 (9th Cir. 1995) (abstention improper where arrest and issuance of citation were
25 executive acts not judicial in nature, and only potential for future state judicial
26 proceedings existed). The state proceedings must be pending, not merely available,

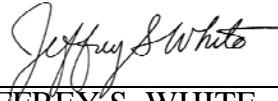
1 and plaintiffs must be seeking relief that would interfere in some manner with the state
2 court litigation. *See Green v. City of Tucson*, 255 F.3d 1086, 1094 (9th Cir. 2001).
3 Plaintiff has alleged that a criminal prosecution against him is pending in state court,
4 and Plaintiff must first raise this issue there. Where, as here, Plaintiff's claims are
5 barred under *Heck* and the *Younger* abstention doctrine, the action must be
6 DISMISSED without prejudice.

7 **CONCLUSION**

8 For the forgoing reasons, Plaintiff's complaint is hereby DISMISSED. The
9 Clerk shall close the file and enter judgment in this case.

10 IT IS SO ORDERED.

11 DATED: January 25, 2008


12 JEFFREY S. WHITE
13 United States District Judge

27 UNITED STATES DISTRICT COURT
28

1 FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA
3
4

5 STEPHEN W. OWENS,
6 Plaintiff,

Case Number: CV08-00291 JSW

7 **CERTIFICATE OF SERVICE**

8 v.
9

10 SANTA CLARA COUNTY POLICE
11 DEPARTMENT et al,

12 Defendant.

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on January 25, 2008, I SERVED a true and correct copy(ies) of the attached, by placing
16 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
17 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
18 delivery receptacle located in the Clerk's office.

19 Stephen W. Owens
20 DXV482
21 885 North San Pedro
22 San Jose, CA 95110

23 Dated: January 25, 2008

24 
25 Richard W. Wieking, Clerk
26 By: Jennifer Ottolini, Deputy Clerk